

EXHIBIT A

CONFIDENTIAL

Page 1

1 CASEY CUNNINGHAM

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3
4 PLAINTIFF

5
6 VS.

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8 CORNELL UNIVERSITY, ET AL

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11 DEFENDANTS

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13
14 DEPOSITION OF

15
16 WENDY DOMINGUEZ

17
18
19 OCTOBER 16, 2018

20
21 CONFIDENTIAL

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MID-ATLANTIC REGION

23 1250 Eye Street NW - Suite 350

24 Washington, D.C. 20005

Veritext Legal Solutions

215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

1 weeks because you were engaged in August; is that
2 right?

3 MR. APKING: Objection, misstates prior
4 testimony.

5 A I'm not certain.

6 Q (By Mr. Netter) Sitting here today, you
7 don't recall doing any work on this prior to August
8 of 2018; is that right?

9 A Not prior to being engaged. I'm assuming
10 I was engaged in August, I'm not certain.

11 Q Miss Dominguez, are you offering an
12 opinion in this case on any recordkeeping issues?

13 A No.

14 Q Are you offering an opinion on any legal
15 issues?

16 A No, I'm not an attorney.

17 Q Can you direct your attention to paragraph
18 29 of your report.

19 In paragraph 29 you are explaining
20 what you mean when you use the term prudent
21 fiduciary, right?

22 A Yes.

23 Q I see there are three footnotes in
24 paragraph 29. Am I right, is it your practice to

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filed under seal

1 plans?

2 A Yes, we do.

3 Q What other sort of plans?

4 A Defined benefit plans.

5 Q Do the types of services that you provide
6 to a defined benefit plan differ from the types of
7 services you provide to a defined contribution plan?

8 A Yes.

9 Q How do they differ?

10 A More focused on asset allocation, but for
11 some of our defined contribution plans we develop
12 models as well, so those would be an overlap.

13 Q For defined benefit plans in which you
14 have responsibility for asset allocation, does that
15 require more labor?

16 A Can you clarify?

17 Q Um, comparing plans where your
18 responsibility for actually managing the asset
19 allocations and plans where you are just advising on
20 menu construction.

21 Is more labor involved in managing
22 the asset allocation?

23 MR. APKING: Objection, vague.

24 A As I mentioned before, for some of our

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transcript pages 36-37
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1 A It wasn't recommended.

2 Q Let me have you flip the page to page
3 eight. Page eight has a section entitled,
4 Alternative Investments?

5 A Uh-huh.

6 Q And the first sentence there says,
7 Innovest believes that risk based portfolios should
8 contain exposure to various asset class and clients
9 should consider including alternative investments.
10 For example, hedge funds and private equity in these
11 portfolios.

12 Now, alternative investments are not
13 one of the major asset classes, right?

14 A Correct.

15 Q And would you agree that alternative
16 assets are typically understood to have greater risk
17 than the traditional asset classes?

18 A No, different type of risks.

19 Q When you say different types of risk, what
20 do you mean?

21 A Alternative investments typically have
22 uncorrelated risks to the other markets, there is
23 other issues like liquidity risk, manager specific
24 risk.

1 Q Um, despite the fact that the risk may be
2 uncorrelated, the risk still has a magnitude, right?

3 MR. APKING: Object to the form.

4 A I don't understand what you mean.

5 Q (By Mr. Netter) When you measure risk for
6 a fund, how do you typically do so?

7 A There's a lot of different ways that you
8 can look at risk. Number of holdings, scope from
9 which they invest, quantitative measures, like beta.

10 Q And what risk measures does Innovest
11 typically use when it evaluates the risk of an
12 investment option?

13 A All that I said.

14 Q So you, in order to ascertain the risk of
15 a particular fund, you would look at the number of
16 holdings, the scope from which they invest, and the
17 quantity of measures?

18 A Yes.

19 Q I'll have you turn to page ten. There's a
20 section on page ten called ongoing investment
21 monitoring.

22 Do you see that?

23 A Yes.

24 Q And under the fourth paragraph, there's a

1 bolded phrase performance measurement.

2 Do you see that?

3 A Yes.

4 Q And this says, the performance measurement
5 consist of evaluating a portfolios time weighted
6 rates of return, characteristics and sector
7 commitments. This information needs to be compared
8 to both market indices and managers of similar
9 styles.

10 Would you say that that excerpt
11 typifies the advice that Innovest provides on
12 performance management, or performance measurement?

13 A I'd like to read the whole section,
14 please.

15 Okay. I read the section. Can you
16 repeat your question, please?

17 Q (By Mr. Netter) Would you say that the
18 section under performance measurement typifies
19 Innovest's approach to performance measurement?

20 A Yes, for active managers.

21 Q And let me direct your attention next to
22 page 11, the first sentence at the top of the page
23 says, while the quarterly performance review is
24 indeed important, what is paramount in our minds is

1 the ongoing review of material qualitative factors.

2 Do you believe that to be true?

3 A I believe they are both important, yes.

4 Q Do you believe that the ongoing review of
5 qualitative factors is paramount?

6 A Yes.

7 Q And after this section we just read, this
8 response identifies some of those qualitative
9 factors, right?

10 A Yes, it includes some of those factors.

11 Q So do you typically review form EDV as
12 part of assessing the qualitative appropriateness of
13 an investment fund?

14 A I do not, but my team does.

15 Q Would you or your team typically have
16 discussions with the managers about their
17 strategies?

18 A Yes.

19 Q And what else, would you typically conduct
20 on-site due diligence visits or somebody on your
21 team?

22 A Depends on the strategy.

23 Q What strategies would require on-site due
24 diligence?

1 A Alternative investments.

2 Q How do you define alternative investments?

3 A Those that have less correlated returns of
4 the markets usually are through an LP structure.
5 Available only to qualified investors.

6 Q So let me ask you to flip to the end of
7 this section. After the Innovest response, there
8 are some biographies and after that there is a
9 sample performance report.

10 A Okay.

11 Q Can you confirm for me this says sample
12 performance report?

13 A Yes, it does.

14 Q Thank you.

15 MR. APKING: Which?

16 MR. NETTER: There you are.

17 MR. APKING: Okay.

18 Q (By Mr. Netter) Now if you turn to page
19 11. The chart on page 11 appears to be similar to
20 the chart that we looked at before, right?

21 A Correct.

22 Q This is showing the various style boxes
23 that are filled on this sample menu?

24 A Yes.

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1 A I guess I'm confused as to how you are
2 grouping your sentences together.

3 So can you, yes, revenue sharing
4 differs by share classes.

5 Q Okay. So a share class that charges a
6 higher expense ratio might also provide additional
7 revenue sharing, right?

8 A Yes.

9 Q And at Innovest when you assess the net
10 expense of an investment fund, you back out the
11 revenue sharing, right?

12 A It depends on who receives the revenue
13 sharing.

14 Q If the revenue sharing is used to defray
15 plan expenses, then you would back out the revenue
16 sharing in assessing the net expense of the fund; is
17 that right?

18 A Not necessarily. If it goes back directly
19 to the participant, then I think we would back it
20 out.

21 Q If the recordkeeping were separately
22 negotiated and the revenue sharing were offset
23 against that separately negotiated fee, would you
24 agree then that it would make sense to back out the

1 Q You expect for this computation to address
2 any difference in the amount of revenue sharing
3 being rebated to plan participants?

4 A It was, was it rebated to plan
5 participants or was it used to offset administrative
6 expenses?

7 Q My question is, would you expect for this
8 computation to address any difference in the amount
9 of revenue sharing that is rebated to plan
10 participants?

11 MR. APKING: Object to the form.

12 A Can you the repeat that?

13 Q (By Mr. Netter) Sure. Should this
14 computation in paragraph 28 account for any
15 difference in the amount of revenue sharing that is
16 being rebated to plan participants?

17 A Rebated to plan participants, yes, it
18 should include that.

19 Q Now in that paragraph when you reference
20 the TIAA-CREF mutual funds, which funds are you
21 talking about?

22 A In paragraph 28?

23 Q Correct.

24 A TIAA-CREF has a suite of proprietary

1 Q And just to be precise, we are looking at
2 the TIAA-CREF Lifecycle Retirement Income Fund,
3 right?

4 A Yes.

5 Q So for this particular fund, the
6 retirement class has a total operating expense after
7 fee waiver and/or expense reimbursement of 63 basis
8 points; is that right?

9 A Yes.

10 Q And the institutional class has the same
11 figure at 38 basis points; is that right?

12 A Yes.

13 Q So there's a difference in the expense
14 ratios of 25 basis points?

15 A Yes.

16 Q Do you know whether, have you reviewed the
17 expert report of Al Otto?

18 A Al Otto?

19 Q That's right?

20 A Not that I recall.

21 Q Have you reviewed in this case any data
22 reflecting the amount of revenue sharing generated
23 by particular funds?

24 A Yes.

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filed under seal

Dominguez deposition
transcript pages 66-68
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Dominguez deposition
transcript pages 70-71
filed under seal

1 Q You didn't do any qualitative review of
2 the Vanguard Growth Income K class, did you?

3 A The Vanguard Growth K class?

4 Q Right.

5 MR. APKING: You mean Fidelity?

6 Q (By Mr. Netter) I'm sorry, the Fidelity
7 Growth K class.

8 A No, I did not. I just looked at this
9 chart.

10 Q I want to turn to paragraph 86 of your
11 opening report.

12 This is a chart of the acceptable
13 menu that you say should have been implemented as of
14 August of 2010; is that right?

15 A It is an acceptable menu. It is
16 reasonable that it would be created then.

17 Q How did you put together this menu?

18 A I looked at what the CAPTRUST
19 recommendation was in 2014 and evaluated each of
20 those investments and determined whether or not it
21 would have been reasonable to select them back in
22 2010.

23 Q Okay. So you didn't start with a universe
24 of funds to consider, right?

1 A No.

2 Q You started with 2014 recommendation,
3 right?

4 A Yes.

5 Q And I believe you just testified that
6 customarily when you are selecting a new menu, you
7 would only look at funds that had performed well in
8 recent years, right?

9 A If you are selecting a new menu, you would
10 throw out funds that had performance issues.

11 Q Okay. So the funds that were selected by
12 CAPTRUST in 2014 were selected based in part on
13 their performance from 2010 until 2014, right?

14 MR. APKING: Object to the form.

15 A I'm assuming so.

16 Q (By Mr. Netter) So you then are
17 necessarily excluding from consideration for your
18 2010 menu any investments that proved not to perform
19 well from 2010 to 2014, right?

20 MR. APKING: Object to the form.

21 A Can you say that again?

22 Q (By Mr. Netter) Let's take a step back.
23 So you just said that the fund that were selected by
24 CAPTRUST in 2014 were selected based on an analysis

1 this table?

2 Q (By Mr. Netter) Correct.

3 A Right here. I believe I completed it all
4 at the same time, but just noted different reasons
5 for not including those funds.

6 Q Now, Miss Dominguez, you said that these
7 funds came from the CAPTRUST best in class lineup in
8 2014, right?

9 A Yes.

10 Q The CAPTRUST actually had two best in
11 class lineups in 2014, didn't it?

12 A Uh-huh, yes.

13 Q How did you determine only to look at the
14 TIAA lineup?

15 A Because it was the one that I selected.

16 Q Okay. As between TIAA and Fidelity it was
17 an arbitrary selection?

18 A Yes.

19 Q So you didn't compare funds within the
20 same asset class that were on the two menus, right?

21 A There was a huge overlap between the two
22 menus. And I did not, I looked at the TIAA menu.

23 Q But to the extent that the funds did not
24 overlap, you didn't assess which fund was more

1 MR. APKING: Object to the form.

2 A I'm not certain if they changed it over
3 time.

4 Q (By Mr. Netter) Now, when you evaluated
5 the TIAA real estate account, you didn't use that
6 same benchmark, did you?

7 A When I evaluated it when?

8 Q In conjunction with repairing your opinion
9 in this case?

10 A I didn't evaluate, can you say that again?

11 Q Did you evaluate the performance of the
12 TIAA Real Estate Account in the course of preparing
13 your opinion in this case?

14 A Yes, as 102 states, I looked at the TIAA
15 Real Estate relative to the benchmark that it
16 created and underperformed those for three and five
17 years.

18 Q And that's the only comparison you looked
19 at; is that right?

20 A No, because in the next paragraph it says
21 the TIAA Real Estate Account ranked dead last in its
22 peer group for one, five and ten year periods.

23 Q And what would the peer group look like
24 for the TIAA Real Estate Account?

1 A I'm not certain.

2 Q You don't know what funds were in the peer
3 group referenced in that March 2010 report?

4 A No.

5 Q Did you prepare any reports on the real
6 estate account for Innovest in 2010?

7 A I don't believe so, no.

8 Q When you say you, let me broaden that.
9 Did Innovest prepare any reports on the TIAA Real
10 Estate Account in 2010?

11 A I don't believe so.

12 Q Did you go back to consult any historical
13 Innovest analysis when you were preparing this
14 report?

15 A No.

16 Q In paragraph 108 of your report. You
17 compare the TIAA Real Estate Account to the Vanguard
18 REIT Index Fund Institutional Shares.

19 Do you see that?

20 A Yes, I do.

21 Q There's also reference to VGNSX. What is
22 VGNSX?

23 A The Vanguard REIT Index Fund.

24 Q Is it possible that's actually VGSNX.

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transcript pages 140-141
filed under seal

Dominguez deposition
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filed under seal

Dominguez deposition
transcript pages 157-158
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Dominguez deposition
transcript pages 160-166
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Dominguez deposition
transcript pages 198-199
filed under seal

1 this shows everything, but I know it has sheets in
2 Windows in the native format.

3 MR. NETTER: I assume so as well, but I
4 will stipulate to the fact that this is just a
5 print-out and there might be something hiding in the
6 native format.

7 Q (By Mr. Netter) Miss Dominguez, the
8 performance scoring methodology that you've used on
9 Exhibit 315, isn't the same as the methodology you
10 were describing earlier, right?

11 A What methodology was I describing earlier?

12 Q So earlier you stated that your analysts
13 can with the approval of the investment committee
14 adjust the score, the performance score for a
15 particular fund based on their qualitative review of
16 the fund, right?

17 A Qualitative review and other information
18 like is listed here, looking at consistency of
19 performance and rolling three year performance.

20 Q But the methodology you employed in
21 Exhibit 315 is just a formula quantitative measure,
22 right?

23 A Yes.

24 Q Now, Miss Dominguez, we discussed many of

1 A Okay.

2 Q Dated August 24th, 2018. I take it you
3 authored this report?

4 A Yes, I did.

5 Q You mention you had some assistance from
6 counsel?

7 A Yes.

8 Q Did you author the first draft of this
9 report?

10 MR. APKING: Object to the form, object to
11 work product.

12 A We work together.

13 Q (By Mr. Feldman) So you worked together
14 with counsel in putting together the first draft?

15 A Yes.

16 Q Now, you have 134 footnotes, at least as I
17 depict in this report, correct?

18 A Yes.

19 Q Now, do you agree with me that some of
20 your footnotes refer to text, for example, in
21 footnote four you refer to a text from Fiduciary
22 360?

23 A Yes.

24 Q And some of your footnotes refer to

1 State of Missouri

2 SS.


3 County of St. Louis

4 I, Randy R. Dunn, a Licensed Certified Court
5 Reporter by the Supreme Court in and for the State
6 of Missouri, duly commissioned, qualified and
7 authorized to administer oaths and to certify to
8 depositions, do hereby certify that pursuant to
9 Notice in the civil cause now pending and
10 undetermined in the City of St. Louis, State of
11 Missouri, to be used in the trial of said cause in
12 said court, I was attended at the offices of
13 Schlichter, Bogard & Denton, 100 South Fourth
14 Street, in the City of St. Louis, State of Missouri,
15 by the aforesaid attorneys; on the 16th day of
16 October, 2018.

17 The said witness, being of sound mind and being
18 by me first carefully examined and duly cautioned
19 and sworn to testify the truth, the whole truth, and
20 nothing but the truth in the case aforesaid,
21 thereupon testified as is shown in the foregoing
22 transcript, said testimony being by me reported in
23 shorthand and caused to be transcribed into
24 typewriting, and that the foregoing page correctly

1 set forth the testimony of the aforementioned
2 witness, together with the questions propounded by
3 counsel and remarks and objections of counsel
4 thereto, and is in all respects a full, true,
5 correct and complete transcript of the questions
6 propounded to and the answers given by said witness;
7 that signature of the deponent was not waived by
8 agreement of counsel.

9 I further certify that I am not of counsel or
10 attorney for either of the parties to said suit, not
11 related to nor interested in any of the parties or
12 their



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14

15 Randy R. Dunn RPR, CRR, CCR No. 193
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